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THE SITUATION IN CENTRAL AMERICA: PROCEDURES FOR THE ESTABLISHMENT OF A FIRM AND LASTING PEACE AND PROGRESS IN FASHIONING A REGION OF PEACE, FREEDOM, DEMOCRACY AND DEVELOPMENT

Note by the Secretary-General

1. This document contains the second report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), created by General Assembly resolution 48/267 of 19 September 1994. MINUGUA falls within the framework of the negotiating process between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) being conducted under my auspices, and was established with the mandate to verify implementation of the Comprehensive Agreement on Human Rights, signed at Mexico City on 29 March 1994 (A/48/928-S/1994/448, annex I).

2. The report covers the three months (21 February to 21 May) that have elapsed since the submission of the Director's first report (A/49/856 and Corr.1). It is divided into sections that present, successively, the general context in which the Mission has been operating, a description of the activities carried out by the Mission, including summaries of several of the cases considered, and conclusions and recommendations regarding the human rights situation in Guatemala. I have transmitted a copy of the report to the United Nations High Commissioner for Human Rights with the request that it be brought to the attention of the members of the United Nations Commission on Human Rights.

3. I should like to thank the Government of Guatemala and URNG for their continuing support for the Mission and their cooperation with it, which are crucial in facilitating its work. I am also grateful to the Group of Friends of the Guatemalan peace process - Colombia, Mexico, Norway, Spain, the United States of America and Venezuela - for having continued, and even expanded, their valuable support for the United Nations efforts; to the Governments of

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Argentina, Brazil, Colombia and Spain for having offered the services of their police officers to MINUGUA; and to the Governments of Brazil, Spain and Sweden for having made their military liaison officers available to the Mission.

4. Lastly, I am pleased to recognize the progress made in the negotiations and hope that it will lend impetus to the achievement of a firm and lasting peace.

ANNEX

Second report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala

I. INTRODUCTION

1. Established by General Assembly resolution 48/267 of 19 September 1994, the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) was launched on 21 November 1994 within the framework of the negotiating process between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) being conducted under the auspices of the Secretary-General. In the Comprehensive Agreement on Human Rights (hereinafter referred to as "the Agreement"), the parties requested the establishment of a mission to verify human rights and compliance with the commitments made in the Agreement. That mission was to be a component of the overall verification of the agreement on a firm and lasting peace which the parties had undertaken to sign (see document A/48/928-S/1994/448, annex I, sect. X).

2. The first report of the Director of MINUGUA (A/49/856 and Corr.1) was transmitted to the Secretary-General, who in turn submitted it to the General Assembly. In resolution 49/236 of 31 March 1995, the Assembly, inter alia, took note with satisfaction of the report of the Director of the Mission; decided to authorize the renewal of the mandate of the Mission for a further period of six months; called upon the Government of Guatemala and URNG to follow the recommendations of the Mission and to comply with their commitments under the Agreement; and invited the international community to increase its support for institution-building and cooperation projects with governmental and non-governmental organizations, intended to strengthen the Guatemalan system for the protection of human rights.

3. This report covers the period between 21 February and 21 May 1995. During that time, MINUGUA consolidated its presence in the field through eight regional offices and five subregional offices. The Mission currently comprises 339 people, 227 of whom are international civil servants, including 103 from the United Nations, 73 are specialists from the United Nations Volunteers, 10 are military liaison officers and 41 are police human rights observers. In addition, it has 112 locally recruited staff.

4. The Mission's offices receive complaints of alleged violations which, after a preliminary review to ascertain that they meet the admissibility requirements, are verified by teams of civilian and police human rights observers exercising the powers vested in the Mission. The effective and independent investigation of those complaints by the competent State agencies is also verified.

5. Furthermore, the Mission has undertaken a programme of support for and cooperation with national institutions and bodies responsible for protecting and

promoting respect for human rights; carried out institution-building activities; and provided support to the judiciary and its auxiliary organs, the Public Prosecutor's Office, the Counsel for Human Rights and the Presidential Human Rights Committee (COPREDEH). In order to promote international technical and financial cooperation, the Secretary-General created a Trust Fund for the Guatemalan Peace Process and invited the international community to contribute to it. Thus far, Norway has responded with a contribution of US$ 1 million.

6. As the Agreement stipulates, bilateral meetings have been held with each of the parties. The Director of the Mission has held regular meetings with the President of the Republic and, in Mexico, with the URNG General Command. MINUGUA has also continued to cooperate closely with its official government counterpart, COPREDEH, which is setting up regional offices in the same locations as MINUGUA offices. The Mission has been in regular contact with various government ministries and with different State agencies involved in the protection of and respect for human rights, such as the Congressional Human Rights Commission and Peace Commission, the judiciary, the Public Prosecutor's Office and the Office of the Counsel for Human Rights.

7. The Mission has continued to receive assistance from the agencies of the United Nations system, especially the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Development Programme for Displaced Persons, Refugees and Returnees in Central America (PRODERE).

II. CONTEXT IN WHICH THE MISSION IS OPERATING

8. During the period in question, the Mission operated in the context of a continuing high level of public insecurity; a great number of land-related disputes; tensions between the Government and the business sector over tax policy; the launching of pre-electoral activities; continuing public concern over the human rights situation; positive reactions to the first MINUGUA report, followed by questions as to its impartiality; and, as regards the internal armed conflict, an increase in harassment and attacks on military units.

9. Lack of public security and its effect on human rights continued to be one of the population's main concerns. Violence affected various segments of Guatemalan society. Some cases, such as the attempt on the life of the President of the Chamber of Industry, caused a public outcry and demonstrated the vulnerability of the population at large. According to National Police data 2,053 people were killed and 4,078 injured in Guatemala between 1 January and 15 May 1995 as a result of criminal violence. The high incidence of kidnappings has continued in recent months and the Congress unanimously adopted Decree No. 14/95 extending the application of the death penalty in such cases; a Special Anti-Kidnapping Unit has been set up within the National Police and residents of various areas of the capital city have set up private self-defence groups.

10. As regards the peace process, negotiations were resumed and a new timetable for discussion of the agenda was adopted. On 31 March 1995, the Agreement on Identity and Rights of Indigenous Peoples was signed, and a few weeks later, the

Government and URNG began discussion of an agreement on socio-economic aspects and the agrarian situation. It was in this encouraging atmosphere that the Secretary-General of the United Nations visited Guatemala in the first week of April.

11. As regards land-related disputes, there were many occupations of rural estates. Occupiers cited labour problems and problems of access to and use of land, but the view in other quarters was that the action was politically motivated. The occupations caused alarm among landowners, who demanded that the Government evict squatters from their estates, in defence of their right to property. In view of the tense situation, a Multisectoral Commission was set up, in which MINUGUA participated as an observer at the invitation of the Government. Also at the request of the authorities, it observed evictions that were carried out without any violation of human rights. It should be pointed out that some groups of returnees and displaced persons were affected by problems related to access to land.

12. With the announcement of elections to be held on 12 November, the election campaign has come to the forefront of the country's political agenda. The process of creating alliances and formalizing candidacies has begun. The announcement by URNG that it will participate in the electoral process and urging the population to go to the polls was favourably received.

13. In reaction to the Government's new tax policy, the Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras (CACIF) filed complaints of unconstitutionality which were admitted in part by the Constitutional Court. President Ramiro de León Carpio announced a new tax policy that was rejected by the business sector. After negotiations, it was agreed that the customs unification process would be suspended, and the intervention of the Congress settled the matter.

14. The first MINUGUA report was given extensive coverage in the mass media and was favourably received in various quarters. The President gave instructions for the report's recommendations to be incorporated into executive policy, with COPREDEH coordinating the process. URNG also indicated its acceptance of the recommendations.

15. Subsequently, reservations were expressed in some quarters about the Mission's impartiality, the argument being that the attention it gave to complaints involving State officials and complaints alleging URNG responsibility was not balanced. Agricultural producers claimed MINUGUA was not ensuring respect for the right to property, which was being violated by the occupation of rural estates, whereas it was showing concern for the human rights of squatters (paras. 20 and 75 et seq. below).

16. The human rights situation, especially the issue of impunity, remained a national concern and a constant focus of media attention. The Counsel for Human Rights expressed concern at the increase in political and social violence and the ineffectiveness of the State institutions responsible for investigating and punishing human rights violations, and pointed to the many unsolved cases of extrajudicial execution. He also drew attention to the action taken by the Catholic Church in developing a project on "Recovery of the historical record",

the aim of which is to gather and document eyewitness accounts of human rights violations that have occurred in the past three decades, the period to be investigated by the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer, set up on 23 June 1994 by agreement between the parties (A/48/954-S/1994/751, annex II). Lastly, new facts about the involvement of army officers in some cases took on national and international importance.

III. VERIFICATION OF RESPECT FOR HUMAN RIGHTS AND OF FULFILMENT OF OTHER COMMITMENTS MADE IN THE COMPREHENSIVE AGREEMENT

17. In the Agreement, the parties agreed that verification would pay "particular attention" to the rights to life, integrity and security of person, individual liberty, due process, freedom of expression, freedom of movement, freedom of association and political rights, and that human rights would be understood as meaning those rights which are recognized in the Guatemalan legal order, including international treaties on the subject to which Guatemala is a party (Agreement, sect. X, paras. 12 and 15).

18. In keeping with the modern trend to broaden the coverage of protection of and respect for human rights, not only the State but also URNG is required to respect human rights. Consequently, in the Agreement, URNG undertook "to respect the inherent attributes of the human person and to contribute to the effective enjoyment of human rights" and, like the Government, it recognized the need to end the suffering of the civilian population and to respect the human rights of wounded, captured and disabled combatants.

19. The conclusions in this report are not based solely on statistics but also, and especially on qualitative aspects related to the most serious situations and the attention paid to the recommendations made to the parties. The following brief presentation of some cases is designed simply to illustrate the assertions made in the report, which are supported by all the cases and facts verified.

20. The Mission takes very seriously the reservations expressed regarding an alleged bias in its verification work. In this respect, it emphasizes that every complaint is verified with the same rigour, regardless of who the victim or the alleged perpetrator is, provided that the complaint falls within the Mission's mandate. One must not look for impartiality in the number of complaints or situations involving each of the parties, but rather in the equal treatment given to the verification of each complaint.

Commitment I. General commitment regarding human rights

21. Compliance with the first element of the commitment, which involves the Government's adherence to principles and norms designed to guarantee and protect the full observance of human rights, is assessed by verifying the rights to which the Agreement gives priority (paras. 28 et seq. below).

22. The second element, dealt with in subsequent paragraphs and involving the adoption of measures designed to promote and perfect norms and mechanisms for

the protection of human rights, is evaluated in relation not only to priority rights but also to compliance with the other commitments made in the Agreement and with the recommendations made in the first report (A/49/856, paras. 154-203).

23. On 16 March 1995, the Congress of the Republic adopted a law stipulating that the application of the death penalty would be extended to additional kinds of criminal conduct constituting the crime of kidnapping. Within the context of absolute respect for the prerogatives of the Congress, the Mission considered it necessary to speak out about the compatibility of that law with international human rights law, since it violates article 4, paragraph 2, of the American Convention on Human Rights by extending the death penalty to criminal conduct to which the Convention did not apply at the time of its ratification by Guatemala. Likewise, it pointed out that account should have been taken of the advisory opinion of the Inter-American Court of Human Rights of 8 September 1983 relative to Guatemala. The Mission also referred to article 46 of the Constitution of Guatemala, which establishes that "in the field of human rights, treaties and agreements approved and ratified by Guatemala have precedence over domestic law".

24. The Government has continued to cooperate with the Mission and generally to support its work, as can be seen from the interest shown by the President of the Republic and by COPREDEH in the observations and recommendations that MINUGUA makes to the Government.

25. The Mission has received similar demonstrations of cooperation from URNG, with whose General Command it has held regular working meetings in Mexico for the purpose of consulting with it regarding verification and making recommendations to it on the matter.

26. Nevertheless, within this overall framework of cooperation and normal functioning of the Mission, mention must be made of some occurrences or attitudes that adversely affect the parties' commitment to cooperation as provided for in the Agreement. The reluctance of both parties to recognize the responsibilities that they may bear in some cases and their delay in providing data are factors that impede verification. In addition, army officers have made public statements against the Mission, going so far as to claim that it is biased in favour of the guerrillas. One such example is given in paragraph 122 below.

27. A serious violation of the spirit of the Agreement, and more specifically of the security arrangement between the URNG Command and MINUGUA, occurred on 27 March in Ixcán. A group of URNG members fired on a MINUGUA military liaison officer who had got out of his vehicle when he saw a URNG poster. The attack took place after the officer, wearing a regulation uniform and displaying, as did his vehicle, the United Nations emblems, had been talking for a while to some peasants at the scene. After the first shots and when the officer had identified himself out loud as a member of MINUGUA, his attempt to talk was answered by a new volley. The shots did not hit the officer, but they landed very near him, hitting one of the tyres of the vehicle.

A. Analysis of verification of the rights accorded priority under the Comprehensive Agreement

28. During the period in question, the Mission received about 1,600 complaints, 570 of which were admitted for verification. Compared with the figures for the previous period, there as a 75 per cent increase in the number of complaints received and a 97 per cent increase in the number of complaints admitted. One reason for this increase may be the fact that, just before the beginning of the period covered by this report, MINUGUA reached full capacity and completed the deployment of its regional offices. Another reason may be that its mandate was better publicized and the population knew more about it. Furthermore, out of the total of 858 cases admitted between the time when the Mission was set up and 21 May 1995, 261 cases have been closed and it has been established that violations occurred in 46.5 per cent of them. a/ About 70 per cent of the complaints admitted are in the process of being verified, and the Mission is continuing its task of gathering sufficient evidence to reach a determination. Statistical tables on the complaints admitted and the priority rights involved are appended to this report.

1. Right to life

29. During the period in question, 225 new complaints were admitted of violations of the right to life, including deaths as a result of the violation of legal guarantees and extrajudicial executions (54), attempted extrajudicial executions (25), and death threats (146). The Mission continues to be concerned that the largest number of complaints admitted - almost 40 per cent - involve alleged violations of the right to life.

30. With regard to the complaints described in the first report, it should be mentioned that in most of them the Government's investigations have not resulted in the identification of those responsible, although the Mission has verified that there was a violation in 19 cases.

31. The new complaints received include cases in which State agents are alleged to be directly implicated, as well as violations of the right to life as a result of the State's failure to provide guarantees by failing to comply with its duty to prevent, investigate, try and punish.

32. A large percentage of complaints refer to cases of the appearance of dead bodies; they are similar in their modus operandi, the background of the victims and the locations in which the bodies are abandoned, all of which are characteristic of the mode of action of organized "social cleansing" groups (paras. 35 et seq. below). In several of these deaths, the direct participation of State agents, particularly members of the National Police, has been initially claimed. There have also been violations of the right to life where the evidence points to the responsibility of individuals under the control of the army, such as military commissioners.

33. New complaints of death threats were received which particularly concerned individuals linked to organizations or activities for the protection and promotion of human rights, trade unionists, priests and citizens who refuse to participate in the Voluntary Civil Defence Committees (CVDC).

(a) Extrajudicial executions or deaths in violation of legal guarantees

Case 1

34. On 22 January, at Canalitos near the capital city, Sandro D. Páiz Luna was shot dead, allegedly by a military commissioner. Eyewitnesses agree in their identification of the culprit. The prosecutor waited 45 days before ordering the arrest of the accused and, although this individual has been seen in the village, so far he has not been taken into custody. Although the army has recognized that the alleged culprit is a military commissioner, it has not suspended or dismissed him.

Case 2

35. On 19 February, the bodies of Santos C. López and Juan C. Cuéllar Ramírez were found in the area of El Mirador, Guatemala. Both had been shot at point-blank range and had their arms tied behind their backs. There is evidence that López had been involved in criminal activities, which supports the hypothesis that the murders were so-called "social cleansing" operations. Since the 1980s, corpses have frequently appeared in the place where these bodies were found. In May, four other bodies presenting the same characteristics were found in the area.

Case 3

36. On 3 March, on the La Colina estate in Santa Rosa, the bodies of two students, Malcolm W. Lafuente Mix and Marlon C. Viera, were found with multiple and point-blank gunshot wounds. Viera had a criminal record. The youths had been abducted the previous day in the capital city by several armed individuals driving a vehicle which was identified. The Criminal Investigation Department concluded that two National Police officers, one of whom had had his car stolen by the victim, and an associate were responsible. As of now, one of the officers is still at liberty.

Case 4

37. On 19 April, Luis Orozco Cahuex, Tilio S. Citalán, Tereso Gardica Cotón and Arcadio García Mazariegos, peasants from Las Majadas, Quetzaltenango, disappeared shortly after the arrival of military patrols who were looking for an URNG column. Witnesses say that they last saw the victims with the soldiers in a red pick-up truck. The following day their bodies, with their arms tied behind them, were found beside the Huehuetenango-Sololá road. The medical examiner said that they had been strangled, and some of them bore signs of having been beaten. The Mission found out that the peasants had been arrested in an area controlled by the army. A pick-up truck similar in style and colour to that described by witnesses was seen several days later by MINUGUA at the army post. The Mission is in the process of interviewing members of the patrols in question.

Case 5

38. On 25 April, while in custody at the National Police station in Villa Nueva, Guatemala, Byron E. Orozco Ambrosio, a former soldier, was strangled and his body hanged, apparently to simulate suicide. The preliminary report by the Office of Professional Accountability of the National Police stated that the police were responsible. On 17 May, the competent court ordered the arrest of the three officers involved who include the precinct commander.

Case 6

39. On 27 January, Apolo A. Carranza Vallar, a professor at San Carlos University, disappeared after leaving his office at the Pan-American Health Organization. The Mission was unable to obtain further information on this alleged enforced disappearance until the end of May, when the press published statements attributed to Erwin González Barrientos (paras. 40 et seq. below), naming the chief of the Escuintla military zone as the mastermind behind the professor's abduction and death and indicating the place where he was buried. On 29 May, MINUGUA accompanied the judicial authorities to the exhumation of the body, which was found in the place indicated. The family identified the victim's clothing and other personal effects, and dental examination confirmed his identity. The Mission also learned that the body had already been found at that location on 19 February, but had not been identified. At the time, although the body had a fatal gunshot wound, the Santa Lucía police chief, now under arrest for the attempted murder of González, had notified his superiors that the cause of death was unknown and the judge had ordered the body buried in the same location without investigating the case.

(b) Attempted extrajudicial executions

Case 1

40. On 23 March, seven armed individuals drove Erwin González Barrientos in a pick-up truck to the outskirts of Santa Lucía Cotzumalguapa, Escuintla, and shot at him with intent to kill. The victim says that he survived thanks to third parties who shot at his assailants; the latter returned fire with an automatic weapon. MINUGUA found that one of the bullets had entered behind the victim's ear and exited through his right cheek. The victim said that he knew his attackers and identified the National Police chief at Santa Lucía as one of them. Local residents, visibly frightened, admit that they heard shots and saw the victim, but no one admits to recognizing the assailants. Relatives of González confirm his assertion that, on a subsequent occasion, his home was fired at from a Yamaha motorcycle. On the night of 25 March, uniformed officers of the National Police came to his home twice to arrest him without a warrant. MINUGUA discovered that the pick-up, the motorcycle and the automatic weapon which had been described were at the Santa Lucía police station and that a patrol car had gone to González' house on the night of 25 March.

41. The Director-General of the National Police went to Santa Lucía. After obtaining basic information about the case and conducting a preliminary investigation, he ordered the administrative detention of the police chief for unauthorized use of a police vehicle - the pick-up truck - in which his

fingerprints had been found. The prosecutor delayed the application for the suspect's arrest until 31 March. According to the victim, the judge advised him to withdraw his complaint, stating that if he did not, they would kill him. The competent magistrate also refused at first to order the accused's arrest. The police chief and another officer are currently in custody by judicial order and a third accused is in hiding. The chief of the Escuintla military zone spoke in defence of the police chief at meetings with the prosecutor, the judge and MINUGUA. The Office of Professional Accountability is conducting investigations to establish responsibility.

42. The victim was harassed and threatened in the days following the events and, as a result, left the country with the help of a humanitarian organization. Some weeks later, he returned for fear of alleged reprisals against his family. Under protection from the Treasury Guard and the Office of the Public Prosecutor, he made a statement to the latter regarding the case. The press then published his statements on the existence of a criminal organization in which, in addition to the above-mentioned police chief, the chief of the Escuintla military zone, army officers, members of the army intelligence branch (G2) and other civilians were implicated and had participated in serious crimes such as the murder of the abducted professor (para. 39 above).

(c) Death threats

Case 1

43. On 27 March, after a talk was given about MINUGUA in El Tucán, Petén, several local residents stated in writing that they wished to withdraw from the CVDC. As a result, they received death threats from the CVDC chief and a captain of the army post. The individuals in question were summoned to the army post and ordered to sign a letter of support for the CVDC. The captain told them that if they continued to refuse, they would be treated "like guerrillas", might "die like dogs" and would be barred from their lands, which belonged to the Ministry of Defence. When the Mission expressed concern to the local military authorities, the captain replied in writing that he had been misinterpreted. Nevertheless, the military authorities, on their own initiative, said that they would take measures against the official.

Case 2

44. On 27 March, Humberto Miranda Ramos, justice of the peace in San Benito, Petén, stated in writing to MINUGUA that he had been the victim of threats and intimidation from the local National Police chief and two of his officers. The justice of the peace had ruled that a large number of the arrests made by the police chief were illegal and had begun proceedings against him. The death threat was directly related to pressure to close this investigation and took place in the context of defamatory statements made against the judge by the police chief in the press. Because of the gravity of the case, the Supreme Court filed habeas corpus proceedings in favour of the judge. This and other cases of illegal arrest by the National Police chief in Petén, also verified by MINUGUA, led to his suspension from duty and house arrest and to the transfer of other implicated police officers to various parts of the country.

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2. Right to integrity and security of person

45. The Mission admitted 140 new complaints of violations of this right, representing 24.5 per cent of the total number of complaints admitted. The Mission remains concerned at the persistence of cases of torture (10), the most serious violation of the right to integrity of person, in violation of Guatemalan law and of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Guatemala is a party. The majority of cases of torture took place during the investigation of ordinary crimes.

(a) Torture

Case 1

46. On 11 January, José A. Hernández Cox was arrested at his home in Paxixil, Totonicapán, by nine police officers. There was no warrant, nor was he taken in flagrante delicto. He was driven to the cemetery and interrogated, to the point where a pistol was placed in his mouth. He was then taken to the police station, where his feet and hands were tied and his head was placed in a water tank until he felt that he was drowning. Despite the illegality of the arrest, he spent 29 days in police custody. The police version, according to which he was arrested in the central part of Totonicapán for disorderly conduct and possession of marijuana, was contradicted by several witnesses and other sources. During the verification of this and other complaints against Totonicápan police officers, the Mission had the help of the Director-General of the National Police. The investigations by the Office of Professional Accountability established the guilt of the police officers, who have been suspended from duty.

Case 2

47. On 1 March, in San José Poaquil, Chimaltenango, Juan Sirín Raxjal was stopped by a military commissioner and a member of the CVDC, who accused him of being behind in reporting for duty on that committee. According to the victim, when he maintained that participation in CVDC patrols was voluntary, his hands were tied and he was beaten and dragged to the Palamá school. He was called a guerrilla, his life was threatened and he was left unconscious in the road. When his brother tried to help him, he was ordered to leave under pain of death. Sirín suffered a broken femur and other injuries and underwent emergency hospitalization.

Case 3

48. On 15 April, in the park in Santo Tomás de Castilla, Izabal, Jorge M. Niño Morales and Marvin A. Leiva Bariela were arrested by the Treasury Guard and accused of petty theft. They were tortured by their captors at the Treasury Guard's Anti-Narcotics Unit. The forensic report indicates that the victims sustained injuries and second degree burns caused by blows and burning with cigarettes; one had two broken ribs and the other a broken collar-bone. After their arrest, they were not brought before the judge but were transferred to the custody of the Puerto Barrios National Police. They received medical attention only the following day and at their own request.

(b) Other threats to the right to integrity and security of person

49. The Mission has received complaints of threats made by military commissioners or persons linked to the army, particulary in rural areas, on the pretext that the victims are allegedly associated with the guerrillas or have failed to take part in CVDC patrols (paras. 43 and 47 above). In other cases, the threats have been directed at judicial officials in an attempt to undermine their conduct of certain investigations.

50. The Mission has also received several complaints of threats made by URNG members against agricultural landowners in order to obtain payment of the so-called "war tax". This issue is discussed under the heading "Actions related to the 'war tax' and other attacks on civilian property" (paras. 133 et seq below).

3. Right to individual liberty

51. There were 50 complaints of violations of this right, that is 8.7 per cent of the total number of complaints. The large number of complaints of arbitrary detention by National Police officers, without a warrant or without the victims being caught in flagrante delicto, is again significant. Police reports have frequently been altered to make it appear that the victims were caught in flagrante delicto or else that there were errors in the arrest report. There have also been reports of arrests made by military commissioners, CVDC members and deputy mayors, who have no legal authority to make such arrests.

52. The Mission is deeply disturbed by the persistence of kidnappings for purposes of extortion, several of which have been followed by the death of the victim; the authorities have acknowledged the alarming magnitude of this problem. The seriousness of the threat implicit in these crimes, which directly affect the right to life, means that, in many cases, the family does not report the crime to the authorities or to MINUGUA. Mention should be made of the efforts that the Ministry of the Interior and the National Police are making to combat these practices.

(a) Arbitrary detention

Case 1

53. On 16 February, in the capital city, Gustavo A. Comelli Ruiz was arrested by two National Police plain-clothes officers. After interrogating him inside a vehicle with tinted windows, they took him to the National Police motorized unit. There, his wallet and other personal belongings were taken from him; he was released several hours later. He subsequently received several messages from persons claiming to be members of the National Police, who asked him for money in exchange for not implicating him in criminal acts. The victim lodged a complaint with the Office of Professional Accountability, whose investigation resulted in the identification of the two officers responsible. It was subsequently reported, by their superiors, that "Comelli was detained illegally, since the officers did not surprise him in the act of committing any obvious crime or misdemeanour", adding that they "demanded money" from him. The guilty parties are still at liberty.

Case 2

54. On 25 March, in Santa Cruz del Quiché, MINUGUA learned that José Lindo Calel, a member of the "Runujel Junam" Council of Ethnic Communities, had been taken into custody by the military commissioner, the CVDC chief, the deputy mayor and the president of the Chumanzana improvement committee in Chichicastenango, who were informed that the law did not authorize them to do so. At the victim's request, MINUGUA went to the police station to which he was transferred and found that there was no arrest warrant and that the victim had not been caught in flagrante delicto. The police took into custody those responsible for the illegal arrest. On 31 March, at the request of the defence attorney who was also legal adviser to the National Police, the accused was released on bail. The victim had stopped participating in CVDC patrols in 1992 and, since then, had been harassed and threatened by members of the committee, against whom he had filed a complaint with MINUGUA.

(b) Enforced disappearances

55. The Mission has received six new complaints of alleged enforced disappearances. With respect to the cases presented by the Mutual Support Group and referred to in the first report (A/49/856, para. 61), the Mission has continued to verify the State's compliance with its duty to investigate, paying particular attention to the effectiveness of the remedy of habeas corpus and cooperating with the Counsel for Human Rights. Verification has shown that the work of the courts suffers from numerous flaws, such as delays in proceedings, failure to notify in writing the military authorities accused by the plaintiffs, and failure to appear at the places indicated in the summons. In the few cases in which there have been substantive proceedings, the judges determined that three of the individuals had never been abducted and had died at later dates and that five others had been found alive and well.

Case 1

56. On 17 March, Salvador de la Rosa Juárez left his home near Las Trochas, Escuintla; since then, his whereabouts have been unknown. His relatives say that he was an army collaborator and one witness says that, on the day of his disappearance, he was "patrolling" with soldiers. One of the alleged members of the patrol, Revolorio Colombano, known as Carlos Cubano, the victim's uncle by marriage and a driver of army vehicles, told the victim's wife that her husband was already dead and threatened her in order to make her drop the investigations and accusations, which he believed she was making against him. Several days later, the bodies of four youths were found in the same place, two of whom were nephews of the victims. On 13 April, Revolorio Colombano was shot dead in his home by three unknown persons. The National Police at Nueva Concepción conducted no investigation into the disappearance and attributed it to common criminals, stating that it did not fall within the jurisdiction of MINUGUA and refusing to cooperate.

4. Right to due process

57. During the period in question, 75 complaints of violations of this right were admitted, accounting for 13.34 per cent of the overall total. The majority refer to the legal duty of the State to investigate and administer punishment.

58. The new complaints admitted and the current status of earlier complaints show that, for the most part, there has been no progress in the investigations and that action and inquiries which could and should have been undertaken in a timely manner were not. The recommendations of the experts of the United Nations Commission on Human Rights and of various national groups resulted in a statutory reform of the penal process designed to improve the functioning of the system of justice. Nevertheless, the Mission has been able to verify that the courts' response to human rights violations, and to crimes in general, continues to be excessively slow and is hampered both by outside pressures on the Public Prosecutor's Office and the judiciary and by the inherent failings of these bodies. This explains why the identity of those who masterminded highly publicized cases has not been established. Other cases which caused a public outcry in February and March 1995, such as the appearances of dead bodies, have been superficially investigated by the competent authorities.

59. The Mission is deeply concerned that this situation primarily affects three fundamental rights, namely, the rights to life, integrity of person and individual liberty. The competent authorities often do not conduct investigations, even when they know of the perpetration of crimes subject to prosecution ex officio, until a complaint is filed; they also often do not investigate in depth the crimes that are reported, in many cases taking only procedural steps which do not allow the investigation to progress and the guilty parties to be identified. They are very slow in making inquiries and issuing arrest warrants in cases where there is evidence as to who is the guilty party. Many arrest warrants are not even served, though it is perfectly possible to do so, and this has enabled criminals who have already been identified to escape. Moreover, persons accused of serious human rights violations have been immediately released on bail. The Mission calls attention to the fact that, while the Code of Criminal Procedure favours the presumption of innocence and the granting of release on bail, reflecting the most advanced legal trends in this area, failure to adhere to the rules stipulated in that Code may subvert its meaning and allow crimes to go unpunished.

Case 1

60. On 3 February 1995, a seven-year-old girl was raped by two men in a school in Sacapulas, Quiché. MINUGUA verified that, upon learning of the case, the Sacapulas justice of the peace, a brother-in-law of the school principal, and the secretary of the court, an uncle of one of the accused, neglected basic judicial proceedings such as taking statements from the accused and carrying out a forensic medical examination. It was also found that the justice of the peace tried, unsuccessfully, to persuade the victim's father, a police chief, to drop the case by asking the father's superior officer to put pressure on him to do so.

Case 2

61. On 29 November 1994, in Morales, Izabal, Ignacio Cruz Contreras was shot dead by three police officers who, a few days later, were transferred to another police station in the department. This case was included in the first report (A/49/856, para. 41). Verification has revealed serious omissions, and complicity by State agents, in the investigation and prosecution of the crime. Only on 7 March 1995 did the National Police receive a warrant for the arrest of the accused policemen from the competent magistrate at Puerto Barrios. The accused were improperly informed of the content of the warrant by another police officer who performs administrative tasks at the court, and this enabled them to avoid arrest. No legal action has been taken against the police officer who leaked the information about the arrest warrant, an act acknowledged by the National Police at Puerto Barrios and constituting the crime of aiding and abetting envisaged in article 474 of the Penal Code.

Case 3

62. On 1 April 1994, while driving back from Antigua to the capital city with his wife and one of his children, the then President of the Constitutional Court, Epaminondas González Dubón, was murdered by individuals who were following his car. In the weeks preceding the crime, the official had received death threats. More than a year later, the judicial investigation of the homicide is at a virtual standstill. Although some judges of the Constitutional Court expressed disagreement with the course taken by the proceedings, the Public Prosecutor's Office is sticking to its original hypothesis, namely, that the murder was the work of common criminals. The courts have added the case to a dossier concerning drug trafficking.

Case 4

63. On 24 October 1994, in Puerto Santo Tomás de Castilla, Izabal, Manuel de Jesús Alonso, regional coordinator of the Central General de Trabajadores de Guatemala and general secretary of the Puerto Barrios municipal employees' union, was murdered by four individuals. The victim, along with other trade unionists, had received death threats from an illegal organization calling itself "Jaguar Justiciero" after he had accused the mayor of Puerto Barrios, on the radio, of corruption. The Public Prosecutor's Office identified the culprits and charged a city employee, the bodyguard of the mayor of the municipality of El Estor, with the actual murder. Although the accused was arrested on 26 March 1995 for illegal bearing of arms and the gun which he was carrying at the time was clearly identified, so far there has been no ballistic test of the bullets taken from the victim's body and no attempt has been made to establish whether they came from the gun in question. More than seven months since the murder, there has been no progress in the trial, the accused are still at liberty and they have not even been asked to make a statement.

Cases cited in the first report (A/49/856 and Corr.1) under this commitment

Case 5

64. In the case of the death of anthropologist Myrna Mack (A/49/856, para. 68), where the investigation by the Public Prosecutor's Office has been at a standstill for five months, the victim's sister, Helen Mack, decided to file as plaintiff in a new criminal suit against three soldiers implicated in the crime.

Case 6

65. On 28 February 1995, the Supreme Court decided to reopen the hearing of evidence on the murder of Jorge Carpio Nicolle (A/49/856, para. 70), thus implicitly recognizing the serious irregularities in the case. Responding to new evidence, the judge issued a warrant for the arrest of several of the individuals accused of the murder, almost all of them members of the San Pedro Jocopilas CVDC. To date, only one of them has been arrested. In view of the personal danger to himself, his assistants and several witnesses, the prosecutor requested that the Mission accompany him in making his judicial inquiries. The accused's lawyers complained of what they call "interference from MINUGUA".

Case 7

66. On 5 April 1995, a few hours after taking statements from the soldiers allegedly implicated in the murder of URNG commander Efraín Bámaca (A/49/856, para. 66), the competent judge decided to dismiss the case even though there were pre-trial investigations pending. The prosecutor in the case, although he had supported the application by the defence, subsequently appealed against the dismissal, but as he did so outside the statutory time-limit, he was removed from the case by the Attorney General, who designated a new representative of the Public Prosecutor's Office. The Attorney General filed a complaint against the dismissal. The Mission expressed its concern about this case in a letter to the President of the Republic, in which it concluded that the judge's decision "did not conform to Guatemalan law or to the international principles of due process and the State's duty to investigate and punish". After a public statement was issued on 18 May 1995 by a G2 member, Ángel Nery Urízar, to the effect that Bámaca had been captured alive by the army and that the body of Cristóbal Che, a former URNG member and a collaborator in military zone 13-16, had been placed in his alleged grave, the Mission is continuing to verify respect for due process.

Case 8

67. In the verification of the case of the workers on the San Juan del Horizonte estate (La Exacta) in Quetzaltenango, which originated in a violent eviction resulting in three deaths (A/49/856, para. 84), it has been found that, after eight months, the investigation has made no progress whatsoever because of the inaction of the Public Prosecutor's Office which, without any justification, has neglected to carry out basic inquiries.

5. Political rights

68. The Mission has received only two complaints, of no particular seriousness, which specifically affect these rights and which are in the process of verification. Nevertheless, the Mission is concerned that the climate of violence in the country which, at the end of May, resulted in the death of candidates for the Moyuta congressional seat and for mayor of La Democracia, Huehuetenango, may have an adverse effect on the legitimate activities of those involved in political campaigns.

69. The Government has prepared draft legislation on the personal documentation of the country's displaced population whose presentation to the Congress will constitute a positive response to the recommendation made in this regard in the first report.

6. Freedom of expression

70. During the period in question, the Mission received no complaints regarding violations of this right and, of the two complaints admitted during the period covered by the first report, upon verification it was shown that, in one case, no violation had taken place while verification of the other is continuing. However, the Mission received new complaints of acts of violence against journalists, including the abduction, on 29 March, of Gerson R. López Orantes, a journalist for the newspaper La República, who turned up some hours later with signs of having been severely beaten and tortured. He complained that he had been interrogated about his press articles and about the identity of certain of his colleagues.

7. Freedom of movement

71. The Mission has received complaints about restrictions placed on freedom of movement by the Unidad Revolucionaria Nacional Guatemalteca, particularly the unjustified setting up of roadblocks restricting free movement.

Case 1

72. On 10 April, eight armed members of URNG stopped a group of peasants in the village of San Antonio de las Cuevas, Alta Verapaz, and forced them to cut down trees to block the roadway. They then obliged them to listen to an hour-long talk and demanded a "voluntary" donation. Before leaving, they planted two explosive devices in the roadblock together with a warning about the danger; the roadblock was five yards away from a house.

Case 2

73. On 19 April, members of URNG placed rocks and tree trunks on the Retalhuleu-Quetzaltenango highway, blocking vehicular traffic for nearly six hours. During this time, a Ministry of Finance guard vehicle was forced to stop and, upon seeing the members of URNG there, one of the agents opened fire with his weapon. The guerillas returned the fire, which left one agent dead and three wounded. Although URNG later allowed the wounded to be evacuated, it violated the freedom of movement and placed the civilians detained there in

grave danger by exposing them to the shooting that would have occurred, had the army shown up.

Freedom of association

74. During the period covered by this report, no complaints have been received about extrajudicial executions or abductions directly linked to trade union activities, which is considered to be an improvement in the situation as far as such activities are concerned. However, reports continue to be received of other violations of the rights of persons who attempt to organize themselves into trade unions or to take action in defence of their interests as workers, including threats to leaders, dismissals and reprisals against workers who complain about adverse working conditions, and absence of protection from the courts in cases related to their rights. Also, in a number of cases, telephone calls have been received at night in trade union offices, warning of the alleged planting of bombs.

B. Other rights not considered priority rights under the Comprehensive Agreement

75. Questions have been asked about MINUGUA's failure to verify respect for property rights. In this regard, the Mission has put forward the following considerations.

76. The right to property is one of the human rights recognized in the political Constitution of Guatemala and in international law as laid down in numerous international instruments on the subject.

77. With reference to the implementation by the Government of the general commitment regarding human rights (chap. I of the Agreement), the Parties understood human rights as meaning "those rights which are recognized in the Guatemalan legal order, including treaties, conventions and other instruments on the subject to which Guatemala is a party" (para. X.15 of the Agreement). However, with regard to MINUGUA's mandate, both Parties agreed on precise guidelines for establishing the priority to be given to the verification of certain rights (para. 17). In listing the rights on which MINUGUA will place particular emphasis in verification, the Parties did not include many human rights, such as the right to property. It is within this framework that the Mission verifies respect for human rights and the fulfilment of the commitments contained in the Agreement, before deciding whether or not the Parties have committed violations.

78. In any State that is ruled by law, the regulation and peaceful settlement of disputes between individuals, such as those that arise in connection with the ownership, possession and use of land, is the responsibility of the State. In this connection, the Constitution and the laws recognize and regulate the right to property. The judicial organ must apply these norms in the settlement of disputes and, when necessary, the security forces must enforce the decisions of the courts.

79. However, when, in the course of a conflict between individuals, the question of State or URNG responsibility arises in relation to violations of human rights that are considered priority rights under the Agreement or to violations of the other commitments entered into by the Parties, the Mission shall be competent to admit and verify complaints. On this basis, for example, MINUGUA is verifying complaints against URNG concerning the destruction of installations on rural estates, and threats and reprisals against landowners in order to obtain payment of the so called "war tax" (paras. 50 and 133). Also, where the State fails to discharge its responsibility to investigate and punish acts which affect rights that are considered to be priority rights under the Agreement, the Mission is required to verify whether such failure constitutes a violation of the right to due process. On the other hand, this responsibility ends when, in a dispute between individuals, an act occurs which is not the Parties' responsibility or when the right to due process in respect of a priority right has not been affected.

80. Notwithstanding the above, when it first began to operate in the country and at the request of interested sectors, the Mission did intervene to prevent and thus to help avoid such conflicts. Soon thereafter, given the complexity of the problem and the limited impact of its preventive role and following the establishment by the President of the Multisectoral Commission (para. 11), the intervention of MINUGUA was reduced and is now generally limited to observing evictions from rural estates, invariably at the Government's request.

Commitment II. Commitment to strengthening institutions for the protection of human rights

Judicial organ and Public Prosecutor's Office

81. With regard to the Government's commitment to respect the autonomy and protect the freedom of action of the judicial organ and the Public Prosecutor's Office against any type of pressure, complaints have been received about numerous cases of pressure and intimidation against officials of both bodies, often in cases involving the prosecution of agents of the State. The Government has not taken any steps to resolve this problem.

82. More than 20 judges have complained to the Supreme Court about receiving death threats. The Mission is not aware of any action being taken by the Government to protect them. A number of cases have also been verified in which, since agents of the State are involved, prosecutors show undue reluctance to begin their investigation of the criminal acts that have been brought to their attention for fear of possible reprisals, and require a formal complaint by the victims or their relatives, even though the offences in question are offences which must be prosecuted.

83. The weakness of the judicial organ is all the greater as broad sectors of the population believe that the courts and judges are failing to administer justice in an independent manner. The review of the conduct of judges reputed to be corrupt and the dismissals ordered by the Supreme Court have also been criticized because of the absence of any legal norm clearly regulating such measures in order to ensure that those affected receive all legal guarantees, as well as to safeguard the independence of the judiciary.

Support for the Counsel for Human Rights

84. No significant improvement has been noted in the attitude of State institutions with respect to the consideration of and response to the Counsel's recommendations. The Mission reiterates that, although such recommendations are not binding, their acceptance could be a useful indication of the political will of the Government to support and facilitate the Counsel's work. In carrying out its verification activities and in accompanying officials from the Counsel's Office, the Mission noted cases of refusal to cooperate with and of intimidation of such officials by agents of the State or persons under their control, thereby affecting the Counsel's work.

Commitment III. Commitment against impunity

85. The first report concluded that this phenomenon was the most serious obstacle to the enjoyment of human rights in Guatemala. Verification during the period in question indicates that the majority of those responsible for the acts that were the subject of complaints have not been duly identified, prosecuted and punished by the State, thus reinforcing the general atmosphere of impunity.

86. The first report (para. 202) also pointed out that the State must identify and tackle the root causes of impunity in order to eliminate it. The Mission, taking into account the evidence uncovered in the course of its verification, identified the following components, some of which were directly related to the commitments under the Agreement.

(a) The defective functioning of the administration of justice, of the Public Prosecutor's Office and of the security forces responsible for preventing and punishing crime

87. With the appointment of the new Director of the National Police, in January 1995, there has been an increasingly forceful response both in the fight against crime and in crime prevention activities in highly dangerous areas.

88. Nevertheless, the efforts of the Ministry of the Interior failed to prevent police agents from committing crimes and grave human rights violations. In most of these cases, National Police officials acknowledged the participation of their agents and promptly launched internal investigations, informing the Public Prosecutor's Office of the results. Special mention must be made of the former police inspector of Petén, who was suspended from duty and placed under house arrest. However, in the so-called "social cleansing" campaigns involving agents of the National Police, only one has been detained so far.

89. Because of inadequate budgetary, human and technical resources the National Police is unable to provide nationwide coverage. The problem is particularly acute in rural areas, which are difficult of access and which, in addition, are more affected by the armed conflict; in Nebaj, for example, there is no police station. These shortcomings are exacerbated by the lack of a proper system for the selection and training of personnel, the lack of administrative transparency and the lack of acceptance of the juridical framework regulating the activities of the National Police. The Mission is following closely and supporting the investigation by the Office of Professional Accountability into complaints about

crimes committed by agents of that institution, and the placing before the courts of 112 policemen accused of such crimes.

90. These professional and technical shortcomings with regard to the conduct of criminal investigations have been acknowledged and deplored by the judicial authorities and by the police institution itself. Attention has been drawn to the fact that the Public Prosecutor's Office does not have a policy governing criminal investigations in order to ensure an effective response to criminal activity within the framework of the rule of law.

91. In addition to the shortcomings noted by the Mission in the administration of justice (paras. 58 and 59), there are other negative factors, such as the lack of coordination between the Public Prosecutor's Office and the National Police, the limited number of prosecutors and the consequences arising in specific cases, from the Supreme Court's use of its power to control the operation of the lower courts.

92. The situation described would seem to indicate that, in many cases, the system for the administration of justice is simply not working: however, that must not obscure the fact that there are magistrates and prosecutors who do discharge their responsibilities with dignity and independent judgement, thus providing a welcome counterweight to the general tendency towards impunity. However, the Mission wishes to express its concern at the speed with which some criminal court judges who have shown a willingness to investigate complex cases have been transferred.

(b) <u>The existence of illicit associations linked with crime and with financial or other interests which may enjoy the support, the complicity or the tolerance of State agents</u>

93. The presence of this element in the process of verification is examined in the section dealing with Commitment IV of the Agreement (paras. 104 et seq.).

(c) <u>The autonomy enjoyed by the army in its counter-insurgency and anti-subversive activities and the procedures it uses in this sphere and the broad interpretation it gives to those concepts</u>

94. The army displays considerable self-control in so far as its military actions take place strictly within the context of the armed conflict. Nevertheless, in its anti-subversive activities, it continues to use a broad definition of the terms "guerilla" and "subversive element" (paras. 43 and 120). This leads, particularly in the rural areas, to political polarization which, in the Mission's view, has encouraged the commission of a number of human rights violations that, for the most part, have remained unpunished owing to the influence of that broad interpretation.

95. The Mission has noted attitudes in favour of impunity when the justice system conflicts with military interests, either because the matter in question was considered the preserve of the army, such as armed clashes, for example, or because members or collaborators of the institution are involved in the acts in question. Pressure is often brought to bear against policemen, judges and prosecutors. Such pressure is responsible, <u>inter alia</u>, for the lack of

willingness to prosecute in many cases, even in cases where the army has acknowledged the commission of a violation (para. 34); the attitude of the judge of first instance and of the prosecutor in the case described in paragraph 138; and the dismissal of cases involving army officers (para. 66).

(d) The control exerted over rural communities by military commissioners and Voluntary Civil Defence Committees (CVDCs)

96. The activities of the military commissioners and CVDCs, which have always requested and received the assistance or at least the recognition of the army, have created a situation in which they wield great authority over members of communities. This is reinforced, moreover, by the population's fear and the absence or weakness of the State organs responsible for the prevention and punishment of crime. This de facto authority is usually the root cause of persistent and repeated human rights violations and leads to numerous cases of impunity. Three cases which illustrate this situation are described below.

97. A clear illustration of such impunity was the activity of CVDCs in the case involving Colotenango, Huehuetanango, which was heard by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights because of the events that took place there on 3 August 1993. On the date in question, patrols from Xemal, La Barranca and Colotenango opened fire on peasants returning from a peaceful protest held to denounce acts that had been committed by these patrols and to demand their disbanding, leaving one protestor dead and two seriously wounded. None of the perpetrators were ever punished, despite the issue of a court order on 9 September 1993 for the arrest of 15 members of the CVDC patrol of La Barranca, who are presumed to have fired the shots. In early May 1995, a number of the accused turned themselves in voluntarily, a development which, given this background, may be considered to mark some modest progress in the fight against impunity.

98. A group consisting of the chief military commissioner, other commissioners and the second in command of the CVDC of San Francisco, Baja Verapaz, threatened to kill and harassed residents of the village. Tomás Tista Jerónimo, former deputy mayor of the village, was forced to abandon his family and flee to Guatemala City because of the death threats, which he continues to receive from the group. The threats were apparently made because of his participation in the investigation of the murder of Bernardino Sis Ixpata, which took place in April 1994 and for which the group is presumed to be responsible. Tista's cousin was shot and seriously wounded when members of the group mistook him for Tista, at a time when, according to Tista, he was secretly visiting his family, in March 1995. Despite the complaints that were made in these and many other cases to the Counsel for Human Rights and the Public Prosecutor's Office, no investigation has been undertaken.

99. On 30 April 1993, Tomás Lares Cipriano, leader of the movement for the mass resignation of patrols in the municipality of Joyabaj, was tortured and killed. Prior to his death, a senior army officer had declared that the resignation movement was a tool of the guerillas. The judicial authority, on the basis of the death threats previously received by the victim, the type of weapon used and the statements of a number of witnesses - who subsequently also received death threats - ordered the arrest of the alleged perpetrators, six officers or

members of the CVDCs of the area. During the period from July 1993 to March 1995, four separate arrest warrants were issued without being executed. The only time the National Police went to arrest the accused, on 17 February 1995, in Chorrajax, they were unable to do so because of resistance from 30 armed members of the CVDCs.

(e) The proliferation of and lack of control over individual possession of firearms in the possession of private individuals

100. This element is examined in the section dealing with Commitment IV of the Agreement (paras. 109 and 110).

Characterization of enforced disappearance and extrajudicial execution as crimes

101. Even though the Government has not formally proposed that the Penal Code should be amended by characterizing as especially serious crimes and providing penalties for enforced disappearances and summary or extrajudicial executions, on 27 February 1995, the Peace Commission submitted proposed legal amendments to the legislative commission for the study of peace, by way of reference, leaving it to that congressional commission to submit the proposals formally.

102. The Mission maintains the position it has expressed regarding legal amendments on the criminalization of kidnapping (para. 23), and considers that any extension of the death penalty to cover offences not previously included in the Penal Code, as envisaged in the above-mentioned proposal of the Peace Commission, is contrary to the spirit and letter of the American Convention on Human Rights.

103. The Mission has no evidence that the Government has taken steps at the international level to have enforced disappearance or summary or extrajudicial execution characterized as crimes against humanity. Nor have any legislative amendments been adopted to limit the competence of military jurisdiction, as recommended by the Mission.

Commitment IV. Commitment that there are no illegal security forces and clandestine structures; regulation of the bearing of arms

104. Verification has turned up new evidence of the activity of organized groups falling within the ambit of this commitment and the fact that their membership consists of criminal gangs and clandestine structures linked to or controlled by agents of the State.

105. The frequent appearance of corpses in the so-called "graveyard" bearing signs of torture and coups de grace, the fact that the victims are frequently common criminals, and the inability of the competent national agencies to locate the perpetrators, are characteristic of the modus operandi of the organized groups involved in "social cleansing" campaigns, which can hardly operate without the tolerance, complicity or direct participation of agents of the State.

106. In verifying that due process was respected in the case of the death of the student Alioto López, a case mentioned in the first report (para. 74) and in

which members of the police force have been held responsible, a number of criminal acts aimed at impeding the investigation were verified during this period. These include torture, kidnapping attempts and threats against students who witnessed the incident, against the prosecutor responsible for the case, an attorney from the University of San Carlos, a policeman who carried out an internal investigation against two members of the National Police and two journalists who were present at the protest.

107. In other cases (paras. 39, 40 et seq.) complaints have been received about the existence of clandestine organizations whose leaders or membership are army or National Police officers, who have used their position in those institutions to commit grave crimes and human rights violations with impunity.

Purification and professionalization of the security forces

108. This element is reviewed in the section dealing with Commitment III of the Agreement (paras. 87 et seq.).

Possession, bearing and use of firearms

109. The Mission reiterates its positive assessment of the measures taken by the Ministry of the Interior, such as the revocation of licences to carry weapons that were being used illegally and the expansion of police operations to confiscate weapons which are illegally in the possession of private individuals. The measures adopted by the Department for the Control of Weapons and Ammunition of the Ministry of Defence to check the nearly 100 legally registered weapons stores in the country and the cancellation of the licences of those which did not obey the law are also viewed positively. Despite the progress made and the need for these measures to continue, the Mission reiterates its view that the steps taken so far are inadequate, given the scale of the problem.

110. The first report recommended that the law be amended to severely restrict the right of private individuals to carry firearms. With regard to the organization of members of a community into civil defence urban groups to combat ordinary crime, the Counsel for Human Rights has publicly expressed his opposition to this initiative. He stated, moreover, that arming the civilian population contributes neither to the process of pacification nor to the suppression of crime and constitutes instead a disruptive element, as the CVDCs have demonstrated in the interior of the country.

Commitment V. Commitment to guarantee freedom of association and freedom of movement

111. Reference was made in the previous MINUGUA report to the important role assigned by the agreement to the Counsel for Human Rights regarding the verification of freedom of CVDC membership and of alleged violations of human rights committed by CVDC members. The report highlighted the statement by the Counsel that practical reasons and the prevailing climate of fear had prevented the mechanism provided for in the agreement from functioning properly.

112. During the period covered by this report, some progress was made with regard to individuals' ability freely to decide whether to join or drop out of

CVDCs. Especially significant was the case of 205 peasants from Tuixoquel, San Marcos, who in April, in the presence of the Counsel, the municipal mayor, the representative of military zone 18 and MINUGUA, expressed not only their desire to cease taking part in the CVDCs, but also their fear of possible reprisals.

113. While verifying alleged violations of priority rights (paras. 43, 47 and 49) and accompanying representatives of the Office of the Counsel for Human Rights, the Mission was able to observe repeated violations of this commitment and to confirm the Office's assertions about the prevailing climate of fear and intimidation.

Case 1

114. On 3 March, the Comité Pro Derechos Humanos (CPDH) of El Edén, Quiché, invited the town mayor, the commander of military zone 22, the assistant to the Counsel for Human Rights, PRODERE and MINUGUA, as well as several organizations in the capital city and local residents, to draw up a document certifying that eight individuals, four of them members of the Committee, no longer wished to be a part of the CVDC. This number of witnesses was necessary because of threats from members of the army and the head of the CVDC. The municipal mayor not only did not call the meeting, as was his obligation under the agreement, but also did not even attend it. However, a dozen armed military personnel from the Cari military base were present, deployed inside and outside the room in which the meeting was being held, and three officers were at the Committee table itself. The meeting took place amid shouts and threats from the community, CVDC members, military commissioners and a deputy mayor, all of whom considered those wishing to give up membership in the CVDC as guerrilla supporters. Instead of calming the situation, one of the officers present encouraged the shouts of the crowd and prevented the CPDH members from speaking.

115. Verification indicates that situations persist in which residents of some municipalities are intimidated and threatened to get them to stay in the CVDCs. Despite the desire of some of these people not do so because they consider it unnecessary or of little use, in certain cases this obligation even extends to minors. The coercion is generally carried out by military commissioners, CVDC chiefs and, occasionally, by members of the army. The most common threat is to accuse those who do not participate in the CVDC of being guerrilla supporters, in addition to accusing MINUGUA and the Office of the Counsel for Human Rights of partiality towards URNG. Sometimes the CVDC demands payment of fines or compensation from those unwilling or unable to take part in patrols, and sometimes they are threatened with expulsion from the community and thus from their land.

New Voluntary Civil Defence Committees

116. The Government has continued to fulfil its commitment not to encourage the organization of, nor to arm, new CVDCs.

Commitment VI. Commitment concerning military conscription

117. Verification indicates that the President's decision to suspend compulsory military conscription and to retain only voluntary military service, pending passage of a new military service act, has been honoured. Moreover, it has been observed that youths reaching the age of eligibility for military service are no longer being sent call-up letters. This constitutes progress with respect to the situation noted in the first report and in the Government's fulfilment of this commitment.

118. Cases of voluntary enlistment of minors, including children aged 15 and younger, have been verified. After the intervention of MINUGUA and the confirmation of the ages of the minors, the military authorities ordered the cancellation of their enlistment in all cases.

119. The first report noted that, in fulfilment of the commitment it had made, the Government had submitted to the Congress the draft of a new military service act prepared by the Ministry of Defence, in addition to proposals from the Office of the Counsel for Human Rights and the Guatemalan Widows' Coordinating Committee (CONAVIGUA). The Congress informed the Mission, through its respective commissions, that in order to take a decision on the draft and the proposals, it would be following the discussion of this issue in the peace negotiations.

Commitment VII. Commitment to safeguard and protect individuals and entities working for the protection of human rights

120. The first report noted the persistence of intimidatory rhetoric on the part of members of the armed forces, military commissioners and CVDC members, equating the work of protection and promotion of human rights with subversive activities. The report also underlined the direct influence of such rhetoric on violations whose victims are individuals involved in activities related to human rights. Verification shows that these individuals and non-governmental entities have progressively expanded the scope of their activities, especially in rural communities, despite the persistence of such intimidatory rhetoric. The Mission reiterates its concern at the inadequate response of the competent national bodies and institutions to this situation.

Case 1

121. On the night of 9 April, María de León Santiago, local leader of CONAVIGUA in Santa María Nebaj, was seriously wounded in the head with a stone and then beaten while she lay bleeding on the ground. The assailant, a CVDC member from Xonca, had previously threatened her "for being a guerrilla" and for receiving individuals from the Comunidades de Población en Resistencia (communities of population in resistance) in her home. The Public Prosecutor's Office has not carried out any investigation, and despite the assailant's failure to respond to

judicial summonses, the justice of the peace of Nebaj has not ordered his arrest. On 26 April, in the hamlet of Tzalbal, Nebaj, Magdalena de León Santiago, a member of CONAVIGUA and a niece of María, was harassed and had death threats made against both herself and María by the three sons of the accused. Subsequently, on 10 May, María's nephew Jacinto Santiago Raymundo was also wounded in the head by a stone thrown by the same assailant, who said he had orders to kill them. The assailant subsequently fled the scene and his whereabouts remain unknown.

Case 2

122. On 18 April, following a lecture on the MINUGUA mandate in San Isidro, Comitancillo, San Marcos, residents attending the lecture denounced the fact that membership in the CVDC was obligatory. Local military commissioners threatened to burn down the house of CONAVIGUA delegate María M. Miranda, whom they blamed for the incident, and claimed that all members of human rights organizations, MINUGUA, Defensoría Maya (Mayan Legal Defence Office) and the Office of the Counsel for Human Rights were guerrilla members. The local military authorities told MINUGUA that they would investigate the incident and subsequently visited the hamlet, emphasizing the voluntary nature of CVDC membership and the Mission's authority to verify that fact. Nevertheless, a military patrol reappeared in the hamlet in early May, repeating the message that MINUGUA was not to be trusted because it was on the side of the guerrillas and threatening that the military commissioner would give the military base the names of anyone wishing to leave the CVDC, who would then be viewed as subversives.

123. The Mission trusts that the proper functioning of the unit created especially by COPREDEH to investigate threats such as those mentioned, as well as the opening of COPREDEH regional offices, will contribute to full compliance with this commitment.

Commitment VIII. Commitment to compensate and/or assist the victims of human rights violations

124. In its first report, MINUGUA said that it had asked the Government for information on the bodies responsible for designing civilian and socio-economic measures and programmes aimed at victims of human rights violations, in order to evaluate the progress made in implementing this commitment. Although COPREDEH has expressed concern about this issue and it has been several months since the Government instructed the competent governmental bodies to study and design compensation measures and programmes, the Mission has yet to receive the information it requested.

Commitment IX. Commitment concerning human rights and the internal armed conflict

125. During the period covered by this report, the Mission verified complaints of alleged violations by both parties of the commitment to respect the human rights of wounded, captured and disabled combatants, as well as to end the suffering of the civilian population.

Suffering of the civilian population

126. During the period covered by this report, the Mission registered no new cases of the demolition of electric power pylons attributed to URNG. URNG thus fulfilled its pledge, made to MINUGUA on 23 January 1995, to desist from such actions when they have no direct bearing on the armed conflict. Nevertheless, the Mission has verified URNG actions which constitute violations of the commitment to end the suffering of the civilian population, some of which are briefly summarized as follows.

Case 1

127. On 28 March, URNG combatants attacked the military base at Raxrujá, Alta Verapaz. A projectile launched by the guerrillas exploded on the road adjacent to the barracks, causing the death of Ofelia de la Cruz García, aged 15, who was on her way to the market. An army soldier in a guardhouse was also wounded by the explosion. The URNG Command admitted that the attack had taken place in conditions of good visibility, and although it denied responsibility for the incident, the Mission found that the victim could have been seen by the attackers.

Case 2

128. On the night of 29 March, URNG members stationed themselves on the property of Lucas Lorenzo Mateo in the hamlet of Flor Todosantera, Quiché, from which they opened fire on the military base. Further similar attacks were launched from the outskirts of the hamlet between 24 and 26 April. MINUGUA received several eyewitness accounts confirming the incident and noted damage to the house of one of the three residents who claimed to have been shot by the guerrillas when they shone lights on some insurgents in the hamlet.

129. As part of the process of verifying complaints of civilian casualties of mine explosions, the Mission consulted the URNG Command regarding: (a) the death of Alfredo Orozco Miranda on 14 February while he was on his way to his property from San Francisco El Tablero, San Pedro Sacatepéquez; (b) the death of Carlos F. Carbonel on 24 February on the road from the hamlet of El Rincón to the summit of the Lacandón volcano; and (c) the existence of mines in Matazango, which were interfering with agricultural work and had already caused one civilian death and two injuries in April 1994. URNG said that it normally used mines for specific actions, after which they were removed; cases such as those cited therefore involved mines which had been accidentally overlooked.

130. In the Mission's view, the laying of mines in places where people work, live or circulate constitutes a violation of this commitment and of the principles of international humanitarian law, since it puts the civilian population at unnecessary risk and there is no proportionality between the intended military objective and the foreseeable harm that may be caused to that population. The placing of explosives in barricades located on public pathways (para. 72) also constitutes such a violation. In this regard, it is necessary to mention the public appeal made to both parties on 8 May 1995 by the International Committee of the Red Cross that they prohibit the manufacture or

use of weapons which cause indiscriminate harm to innocent civilians, such as anti-personnel and anti-tank mines.

131. The Mission has verified other instances of attacks by URNG on military bases that unnecessarily endanger the civilian population because of the lack of precision of the weapons used and the location of the firing positions chosen by the attackers.

Case 1

132. At 6 p.m. on 18 May, armed URNG groups entered the Quetzaltenango regional capital, carrying out propaganda actions and stopping civilian vehicles for 30 minutes. One of the points occupied was 800 metres from the military zone. The prudent action of the military authorities, who were aware of the guerrilla presence in the city and promptly informed MINUGUA, postponing the arrival of army troops at those points until after the URNG forces had withdrawn, avoided an armed confrontation that could have seriously endangered numerous civilians.

Actions related to the "war tax" and other attacks on civilian property

133. In its first report (paras. 194 and 195), the Mission mentioned URNG attacks on rural estates and appealed to it to desist from all acts of intimidation against private individuals. In the period covered by the present report, the Mission received complaints of threats and attacks against civilian property, linked in many cases with the collection of the so-called "war tax". The URNG Command has denied responsibility for such actions, claiming that this "tax" is considered a voluntary contribution, sought without threats or reprisals. The Mission has reiterated to URNG that threats, which are always inherent in the cases of tax demands reported to it, and injury to persons are violations of human rights given priority under the Comprehensive Agreement, and that actions against civilian property or reprisals are violations of Commitment IX of that Agreement.

134. Verification has brought to light the existence of cases where there is sufficient evidence to support claims of URNG responsibility, although there are others where third persons passed themselves off as guerrillas in order to extort money from private individuals.

135. Through its meetings with various farmers' associations, the Mission has come to realize that the magnitude of this problem far exceeds the number of complaints received, since fear of reprisals prevents those affected by it from bringing cases to the attention of MINUGUA. The Mission has requested these groups, and URNG itself, to prepare studies of the situation, which will be analysed in due course.

136. The Mission has again asked URNG to desist from this kind of action and appeals to those affected by it to bring their cases to the Mission for verification.

Wounded and captured combatants

Case 1

137. The Mission verified that legal procedures were correctly applied during and after the capture of URNG member Timoteo R. Navarijo Chután by the army on 30 April in the department of Santa Rosa. Nevertheless, in the case described below, it is evident that the Government failed to abide by this commitment.

Case 2

138. On 22 April, URNG member Emilio Paau Caal voluntarily gave himself up at the military base at Las Pozas, Petén, but was only brought before the judge at Flores five days later. Paau told the Mission that he had been tortured to make him reveal where he had abandoned his weapon. The forensic doctor and MINUGUA found cigarette burns on his body. The army translator's claim that the victim wanted to remain at the military base was contradicted by Paau himself when he told the judge, without members of the military being present, that he actually wanted to return to his parents' village. The authorities of military zone 23 denied that torture had been applied. MINUGUA sent a letter about this case to the Government, calling its attention not only to the actions of the military authorities, but also to those of the judge of first instance and the prosecutor from the Public Prosecutor's Office, neither of whom, in the course of inquiries, had investigated the date of Paau's surrender or the treatment received.

Case 3

139. The Mission carried out a preliminary verification to establish the admissibility of the case of the death of a soldier, Obdín Mejía Orozco, who army press releases claimed had been captured, tortured and killed by URNG. The soldier had lost contact with his unit on 22 April during an operation against a group of guerrillas. URNG stated that Obdín Mejía had died in combat and that his body was at coordinates 5726, west of Santa María de Jesús. That information led to the recovery of the soldier's body on 11 May. Due to the advanced state of decomposition of the corpse, neither the date of death nor evidence of torture could be established by the autopsy, but there were two bullet wounds in the skull, one in the chest and three in one leg. On the basis of the description contained in the report of the departmental forensic doctor, the Mission concluded that it was impossible to establish whether a violation had occurred or whether the death had occurred in combat.

Participation of minors

140. The Mission has received information and verified cases demonstrating the participation or potential participation of minors in the internal armed conflict. Cases in which several minors were admitted as army recruits are mentioned elsewhere in this report (para. 118). The Mission has also received reliable information on the participation of minors in CVDC patrols and the presence of children aged under 15 in some guerrilla columns.

141. In that regard, the Mission reminds the Government and URNG that the direct participation in the hostilities of children aged under 15 is a violation of the Convention on the Rights of the Child.

Displaced persons, refugees and returnees

142. Under the agreement, MINUGUA is required to take into account, in the performance of its functions, the situation of the most vulnerable groups in society and of the population directly affected by the armed conflict, including displaced persons, refugees and returnees. In this regard, the Mission worked with UNHCR on the return of refugees to Petén and Ixcán.

Case 1

143. On 28 March, members of the "Junb Chembal Te Kipamal" cooperative in Kaibil Balam, Quiché, reported to the Mission that threats had been made against refugees scheduled to return to the region in April. The deputy mayor, a military commissioner and a civilian influential in the community had organized armed groups to block the passage of the returnees. The Mission verified the situation, which is taking place in the context of other, similar reports of death threats against leaders of the returnees, threats to prohibit freedom of movement and threats of ill-treatment against people attempting to reach San Antonio Tzejá or planning to pass through Kaibil Balam. The power vacuum in the region caused by the absence or negligence of institutions whose task it is to protect human rights is allowing those responsible for the threats to operate with impunity, whether acting in an official capacity or not. Although the Government, through the Ministry of Defence, pledged to ensure freedom of movement, control the actions of CVDCs and even disarm them, deploy a police force in the area and put a stop to the illegal actions that have been reported, that promise has not been kept.

IV. INSTITUTION-BUILDING, INTERNATIONAL TECHNICAL AND FINANCIAL COOPERATION AND HUMAN RIGHTS PROMOTION AND EDUCATION

144. The Mission has concentrated most of its efforts on building those institutions which, if their technical and professional capacity and efficiency were enhanced, could progressively eradicate the existing climate of impunity. Among the advances made in this effort, mention should be made of the reform of the juridical and penal framework and the growing awareness on the part of State institutions and civilian society of the need for an in-depth reform of the system for the administration of justice.

A. Institution-building

145. The Mission's institution-building strategy, as far as the system for the administration of justice is concerned, is to identify short-, medium- and long-term activities that will make it possible to initiate and sustain a process of in-depth transformation of the system as a whole. At the same time, it is trying to make sure that the various institutions of government and society identify with and subscribe to the relevant strategies and projects. In

order to combine its efforts in this area with those of Governments and technical and financial cooperation agencies in the international community, the Mission is holding frequent working meetings with them to exchange information. Furthermore, the Mission's verification work is making an especially valuable contribution to guiding and evaluating institution-building activities, since it provides comprehensive information on regional characteristics and on the realities and deficiencies of the institutions to which those activities are directed.

146. The establishment of the MINUGUA/UNDP Joint Unit has been crucial in ensuring the continuity of efforts in support of the proposed strategy. This body will support and encourage the institution-building activities conducted by the Mission.

Short-term activities to strengthen governmental entities

Public Prosecutor's Office

147. On 24 February 1995, the MINUGUA/UNDP Joint Unit signed a cooperation agreement with the Attorney General of the Republic, for the purpose of providing support to prosecutors in carrying out their duties under the new Code of Criminal Procedure. The results obtained thus far include technical assistance from three international experts in over 100 criminal trials and the holding of training seminars for prosecutors, in coordination with the programme of the Agency for International Development (USAID) in Guatemala, through the Centre for Strengthening the Rule of Law.

Judiciary

148. The activities identified include technical assistance to the office of the criminal public defender, following the model used for the Public Prosecutor's Office project, strengthening of the Judicial Training School, improvements in the computerized legal and management information and documentation service, and the planning and implementation of new administrative systems.

Ministry of the Interior

149. One of the main objectives of the project for this institution, which has responsibility for various auxiliary bodies for the administration of justice, is the development and application of a new policy in criminal matters. To that end, activities are planned in support of the design of crime prevention and social rehabilitation policies, including new prison standards, the improvement of police investigation capabilities and the establishment of effective mechanisms for coordination with the Public Prosecutor's Office. The Government of Venezuela has offered the services of an expert to further the purposes of these projects.

Office of the Counsel for Human Rights

150. The Agreement gave priority to institution-building designed to increase the Office's capacity to investigate violations and to consolidate the efforts of the Counsel for Human Rights in the areas of administration and organization,

as well as in other specialized areas of his activity. Support will also be provided for the design and organization of an Office for Indigenous Rights.

Presidential Human Rights Committee (COPREDEH)

151. Talks have recently begun on reviewing the areas where the Committee needs to be strengthened and on identifying possible areas of cooperation.

152. In order to ensure the sustainability of the institution-building activities described above, a practical demonstration is needed of the State's political will to initiate processes of change in the system of justice and the public security forces. This means that the various cooperation agreements to be signed with the State institutions concerned must specify the commitments which these institutions are taking on (political, institutional, administrative, technical, financial and legal, as the case may be) and the specific contributions that will have to be made.

Long-term action to strengthen the rule of law

153. The short-term actions described above are intended both to produce immediate results in combating impunity and to prepare human resources who, in the medium term, will be able to participate in carrying out the Comprehensive Programme for Strengthening the Rule of Law briefly described in the first report (paras. 145 and 146), which aims at: (a) coordination of the justice sector; (b) improvement of the technical, ethical and administrative quality of the actions of judicial offices, the Office of the Counsel for Human Rights, the Public Prosecutor's Office and the police; (c) promotion of speedy trials; and (d) expansion and extension to all spheres of the country of the culture of respect for the law and confidence in the peaceful settlement of disputes. The Programme will also promote the training of non-governmental organizations and closer ties with the law schools of the country's various universities with a view to dealing with human rights and related issues in their curricula.

154. This initiative forms part of the Human Rights Programme which the Government presented to the informal meeting of the Consultative Group held in Paris in June 1995. The Programme is to be undertaken by State institutions and must achieve a public consensus on key aspects. To ensure its comprehensive implementation, it will be overseen by a committee which will coordinate the various government and judicial bodies.

Strengthening of non-governmental organizations

155. The MINUGUA/UNDP Joint Unit and the Coordinator of Non-Governmental Organizations and Cooperatives for Assisting Victims of the Internal Armed Conflict is compiling a list of 120 non-governmental organizations, including indigenous organizations, that work for the protection and promotion of human rights, in order to identify their needs so that a programme can then be developed for strengthening them.

Human rights education and promotion

156. The Mission's human rights education and promotion activities, which include the dissemination of the Comprehensive Agreement on Human Rights and information on the mandate and role of MINUGUA, form part of the institution-building strategy and are supported by the results of verification activities.

157. A team of human rights promoters has been formed, with 11 civilian observers assigned to each of the Mission's regional offices. This decentralization has made it possible to hold workshops and seminars at the regional level, in order to strengthen organizations for the protection and promotion of human rights, as well as through State education structures, in order to create a network of extension workers reflecting the country's ethnic, cultural and linguistic diversity. The activities undertaken include over 100 talks in communities and 45 seminars or workshops for human rights workers, community leaders, teachers, prosecutors and police officers. This programme is gradual and seeks to avoid duplicating the efforts of other institutions' education and promotion programmes.

158. This strategy is complemented by the press activities carried out regularly by MINUGUA to publicize the Agreement and clarify the Mission's role and mandate. A number of documents have been produced on its mandate (one of which has been translated into four of the main Mayan languages), in support of verification and training, as well as an information leaflet (MINUGUA INFO) in Spanish and English. A radio information campaign on these topics is under way in Spanish and various Mayan languages. Lastly, the Mission's first report and the Agreement on Identity and Rights of Indigenous Peoples have been published.

B. International cooperation

159. In order to obtain political and financial backing for its activities, the Mission has given priority to dialogue with representatives of the international community, especially the countries of the Group of Friends, cooperating countries and cooperation agencies.

160. The Trust Fund covers priority institution-building, human rights education and promotion and public information activities, in addition to activities relating to the Agreement on Identity and Rights of Indigenous Peoples. The Fund currently totals US$ 2.6 million for 10 months. So far, Norway has pledged US$ 1 million, 50 per cent of which has been allocated to financing up to the end of the year the project being carried out in cooperation with the Public Prosecutor's Office. Likewise, the direct contribution of US$ 40,000 from the Institution-Building Project of the National Commission for Refugees, Returnees and Displaced Persons (CEAR), financed by the European Union, has allowed human rights training and promotion activities to continue. Other partners have shown an interest in different projects.

161. UNDP cooperation has permitted the strengthening of the Public Prosecutor's Office to begin, thanks to a financial contribution of US$ 50,000 from PRODERE. UNDP is financing the compilation of the list of non-governmental organizations through a contribution of US$ 70,000 and plans to supplement cooperation with

the Office of the Counsel for Human Rights by providing short-term consultants. This support may also be extended to the promotion and awareness activities being carried out within State institutions in connection with the Programme for Strengthening the Rule of Law in Guatemala.

V. AGREEMENT ON IDENTITY AND RIGHTS OF INDIGENOUS PEOPLES

162. On 31 March 1995 in Mexico City, the Government and URNG signed the Agreement on Identity and Rights of Indigenous Peoples (A/49/882-S/1995/256, annex), which contains a series of commitments for combating discrimination and guaranteeing the specific rights of Guatemala's indigenous peoples.

163. The Agreement requests MINUGUA to verify those aspects relating to human rights recognized in the Guatemalan legal order, including international treaties, conventions and other instruments on that subject to which Guatemala is a party, which should be implemented and applied immediately (art. 46 of the Political Constitution). The remaining aspects will enter into force when an agreement on a firm and lasting peace is signed.

164. On 5 April, in a letter to the Presidents of the General Assembly and the Security Council (A/49/882-S/1995/256), the Secretary-General reported that he had asked MINUGUA to review the Agreement and to assess whether additional resources would be required for verifying its implementation. For its part, MINUGUA, in consultation with both the parties and with indigenous organizations, has begun to analyse which commitments must be implemented and applied immediately and are thus subject to verification as of now. In addition, the Mission has begun to disseminate the Agreement among the indigenous population.

VI. CONCLUSIONS AND RECOMMENDATIONS

165. Verification of respect for human rights and of compliance with the commitments assumed by the parties in the Comprehensive Agreement allows the Mission to conclude that, during the period covered by this report, in the context of a situation where there was cause for concern because of serious and repeated violations of human rights and a persistent climate of impunity, positive steps were taken that should be highlighted.

166. Accordingly, it welcomes various government measures and attitudes, such as: the support for the Mission's work expressed at regular working meetings with the President of the Republic, Ramiro de León Carpio, and the relationship with COPREDEH; the virtual cessation of forcible military conscription; the widespread exercise of freedom of expression; the readiness of senior authorities of the Ministry of the Interior and the National Police to promote the investigation and solving of crimes; moderation in the use of force by the police at demonstrations and in evictions from rural estates; acknowledgement by the army that its troops were responsible for two cases of arbitrary detention and torture summarized in the first report (paras. 51 and 59); and the fact that no encouragement has been given to the organization of new CVDCs.

167. In the area of institution-building, the Mission wishes to stress the full support given by the Attorney General of the Republic to the agreement signed with MINUGUA concerning training for prosecutors, as well as the priority given by the Government to the Programme for Strengthening the Rule of Law.

168. The Mission values the cooperation extended by URNG, as manifested in regular meetings and contacts with its General Command. Likewise, the Mission appreciates the fact that URNG has fulfilled its commitment to suspend the destruction of electric power pylons.

169. In addition to what has been mentioned regarding the parties, the Mission wishes to point to the important role played by the mass media in contributing to public concern about respect for human rights and the struggle against impunity, as well as the role played by specialized non-governmental organizations and other groupings of civilian society.

170. The progress mentioned, while inadequate compared to the magnitude of the problems, shows that it is possible to improve the situation of human rights in Guatemala, if there is political will on the part of the parties and commitment on the part of society as a whole.

171. Notwithstanding the above, the Mission notes with concern that the greatest number of complaints refer to violations of the rights to life, to integrity and security of person and to liberty, in which State agents are allegedly implicated or in which the State failed in its duty to provide guarantees. An implicit culture of intolerance permeates the methods of "social cleansing", threats, the activities of illicit groups and the persistent abuses committed by CVDC members and military commissioners. In some cases, failure to observe due process of law constitutes an actual miscarriage of justice, a situation which openly promotes impunity. In order to overcome this, it is not enough for the Government to refrain from encouraging violations and their impunity, but it must stipulate decisive measures and apply them. The Mission reiterates the need for the Government to have a decisive overall policy for combating impunity, which continues to be the most serious obstacle to the exercise of human rights in Guatemala. The absence of such a policy could explain the difficulty in following up the recommendations made in the first report.

172. The Mission believes that URNG has committed human rights violations and has failed to observe the commitment to end the suffering of the civilian population, by making threats and taking action against civilian property for the purpose of collecting the "war tax"; by unnecessarily endangering civilians not involved in the conflict during attacks on military bases and units; by laying mines or explosive devices in places where civilians work, live or circulate; and by taking reprisals. The Mission considers the attack by URNG members on a MINUGUA military liaison officer to be a serious violation of the spirit of the Agreement and the corresponding security arrangement (para. 27).

General commitment to human rights

173. In fulfilment of its mandate, the Mission paid special attention to the verification of the rights given priority in the Agreement.

174. The Mission concludes that the right to life continues to be the most seriously affected. Violations of this right include extrajudicial executions or deaths in violation of legal guarantees, and death threats. The widespread use of threats is of serious concern to the Mission, because it creates a deep sense of insecurity among the population and places the most important of all human rights at risk. The competent authorities have neither properly investigated nor solved a great proportion of these crimes, a situation which perpetuates the high level of impunity and the difficulty of distinguishing acts which could be classified as human rights violations from others which can be classified as ordinary crimes.

175. The Mission has noted with concern during this period the frequent use of criminal methods known as "social cleansing" to combat crime, which, ironically, in addition to endangering public safety, weaken the very institutions whose duty it is to protect public security.

176. The Mission acknowledges the application by the Ministry of the Interior of sectoral public safety plans, and reiterates the need for an overall plan that covers all aspects, recalling that the guarantee of its fulfilment is inextricably linked to all the recommendations made regarding the National Police.

177. The Mission reiterates the recommendations made in its first report (paras. 156 and 159) concerning the need to organize specific training courses for law enforcement officials so that they will be familiar with and apply the following legal instruments: Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/189 of 17 December 1979); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, September 1989); Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65 of 24 May 1989); and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988).

178. The Mission also reiterates its earlier recommendation to the Government that it encourage the Congress of the Republic to make the declaration referred to in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to ratify the Optional Protocol to the International Covenant on Civil and Political Rights recognizing the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (paras. 158 and 163 of the first report). It also reiterates its recommendation to join in the efforts already under way in the international community, at the level of the United Nations and the Organization of American States, to ensure the recognition of enforced disappearance and extra-legal execution as crimes against humanity.

179. In addition, verification has uncovered cases in which the Government failed to guarantee the right to integrity and security of person in terms of freedom from torture or other cruel, inhuman or degrading treatment, or the threat of such treatment. Cases have been verified in which State officials

appear to be implicated, but they have not been promptly or thoroughly investigated and the guilty parties have not been prosecuted. The Mission reiterates its recommendation that the Government transmit specific instructions to military and police officers in order to prevent these acts, warning them that such acts are crimes subject to disciplinary, administrative and criminal penalties.

180. URNG has not respected the right to integrity and security of person or, in some cases, the right to life, having used threats and intimidation to collect the so-called "war tax", thereby breaking its commitment to respect human rights in general. The Mission recommends that the URNG command explicitly instruct its combatants to desist from such threats and actions once and for all.

181. The Mission has verified cases of arbitrary detention which, it concludes, have not been promptly and thoroughly investigated; moreover, the guilty parties have not been disciplined or brought to trial. This negligence makes the right to individual liberty even harder to exercise and creates conditions in which such abuses can be repeated. The Mission reiterates its recommendation that the Government institute strict control, under a hierarchical chain of command, over the actions of all officials authorized by law to make arrests, detain persons and guard detainees and prisoners.

182. The right to due process has not been properly respected, since the competent bodies have failed to carry out the State's duty to investigate, prosecute and punish perpetrators of human rights violations and, where appropriate, to award due compensation to the victims or their families. In most cases, the judicial system's ineffectiveness constitutes a virtual miscarriage of justice. This problem is evident in cases involving State agents, especially members of the military and police forces.

183. The Mission concludes that the exercise of specifically political rights has not been affected. However, in view of the forthcoming general election, it recommends that the Government continue to promote increased public participation in that event by taking legislative or administrative measures, such as submitting its bill on identity papers for the uprooted population to the Congress of the Republic.

184. The Mission has observed that freedom of expression is widely exercised and, with respect to the complaints received in the previous reporting period, concludes that no violation occurred. None the less, the Mission remains concerned about some cases of serious attacks on journalists, and is still verifying their possible relationship to the journalists' exercise of their profession. It reiterates its recommendation that the Government take steps, through the competent bodies, to protect the life and physical integrity of journalists.

185. The Mission concludes that URNG has violated the right to freedom of movement by blocking highways and roads, holding people up for hours at a time. Moreover, these actions have jeopardized the safety of civilians not involved in the conflict, given the possibility of a reaction on the army's part. The Mission recommends that URNG instruct its forces not to interfere with civilians' freedom of movement.

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186. Verification has also turned up cases in which the competent State authorities have failed to guarantee trade unions' right of association and have not taken prompt action to protect the right to unionize, which is under threat. However, the absence, during the period, of extrajudicial executions and kidnappings directly linked to union activities is considered an improvement in the situation.

Commitment to strengthening institutions for the protection of human rights

187. The Government has failed to respond adequately to the serious shortcomings of the public institutions in charge of ensuring respect for human rights, as shown by the deficiencies in fulfilling the State's duty to take all reasonable steps to prevent human rights violations and to investigate cases of such violations in order to prosecute and punish the culprits and ensure that the victims receive appropriate compensation. Although the shortcomings of these institutions are one of the root causes of impunity, the Mission feels that the Government should focus future efforts on the specific recommendations contained in paragraphs 204 et seq.

188. The Mission recommends that the Government support and strengthen the Office of the Counsel for Human Rights and that it consider and respond promptly to the recommendations made by that official in fulfilment of his vital responsibility to ensure full respect for human rights.

Commitment that there are no illegal security forces or clandestine structures; regulation of the bearing of arms

189. New findings brought to light in the verification show that organized illegal groups continue to commit crimes and human rights violations and that there is reason to believe that State agents are linked to them in many cases. The Mission reiterates its recommendation that the Government identify, disband and suppress such groups and that it investigate possible links between them and State agents, establishing accountability.

190. The Mission appreciates the fact that the Office of Professional Accountability of the National Police is investigating cases where crimes have been committed by police officers, and recommends that the Government continue and step up the process of purifying the security forces by developing a comprehensive policy that provides for political, disciplinary or administrative action at all levels against persons who participate in acts of corruption or other offences or who promote impunity in any way.

191. The Mission values the administrative and police measures taken to tighten control over the bearing of weapons by private individuals, and reiterates its recommendation that the Government institute statutory changes to heavily restrict the right of private individuals to carry firearms.

Commitment to guarantee freedom of association and freedom of movement

192. The Government has continued to honour its commitment not to encourage the establishment of new Voluntary Civil Defence Committees (CVDCs). With regard to the freedom of community members to decide whether to join or drop out of CVDCs,

cases where this commitment is disregarded and where pressures and threats are used to impede such freedom of choice continue to be reported. The Mission reiterates its recommendation that the Government support the work of the Counsel for Human Rights to enable him to fulfil his function of verifying compliance with this commitment, and that it issue instructions to halt such pressures and threats.

Commitment concerning military conscription

193. The Mission concludes that the President's decision to institute a temporary suspension of compulsory military service was upheld during the period in question, and values the fact that, except in some isolated cases which were successfully resolved, forcible recruitment has virtually ceased, in compliance with this commitment under the Agreement.

Commitment to safeguard and protect individuals and entities working for the protection of human rights, as well as their activities

194. Abuse and intimidation of such individuals and entities, particularly by CVDCs, military commissioners and members of the army, has persisted and is encouraged by an intimidating practice of publicly associating these people and institutions with subversive or guerrilla activities. The Mission therefore recommends that the Government make public announcements designed to stop this practice and all other violations of this commitment.

Commitment to compensate and/or assist the victims of human rights violations

195. The Mission, noting that no further steps have been taken to adopt measures and programmes for compensating the victims of human rights violations, recommends that the Government draw up a plan of action for identifying categories of victims and beneficiaries and providing for priority attention to be paid to those whose needs are greatest owing to their economic and social status.

Commitment concerning human rights and the armed conflict

196. URNG has caused unnecessary harm to individuals and private property, breaking the commitment to end the suffering of the civilian population. In their attacks on military targets, its forces have harmed or jeopardized the lives of persons not involved in the conflict and have failed to maintain proportionality between the intended military objective and the foreseeable harm that may be caused to the civilian population.

197. The Mission recommends that URNG issue precise instructions to its combatants to refrain from causing unnecessary harm to individuals and property, to take due care not to create additional risks to life in attacking military targets and, in particular, to end the practice of laying mines or explosives in areas where civilians work, live or circulate.

198. The Mission urges URNG to refrain from attacks on civilian property, such as its destruction of installations on rural estates in retaliation against

agricultural producers who refuse to pay the so-called "war tax", and any other kind of reprisal.

199. The Mission urges the parties to the conflict not to recruit minors and not to allow children under the age of 15 to participate in the hostilities under any circumstances, as required under the Convention on the Rights of the Child and the relevant provisions of international humanitarian law.

200. With regard to the problems encountered by returnees in Ixcán (para. 143), the Mission urges the Government to respect the agreements signed with the parties concerned and to guarantee complete freedom of movement in the area.

Commitment against impunity

201. Verification has confirmed that impunity remains the most serious obstacle to the enjoyment of human rights in Guatemala, despite the manifest concern and commitment of the President of the Republic to combat it and the signs of progress noted in paragraphs 87 and 166. The efforts made thus far have been insufficient to combat corruption or wrongful practices and to overcome the indifference or fear of many officials, a situation which seriously hinders crime prevention and punishment and undermines the value of penal legislation as a deterrent.

202. The Mission considers that the various branches of State authority share responsibility for combating impunity. To fulfil that responsibility, the Government must give top priority to the design of a comprehensive policy of decisive action against impunity. To that end, the Mission reiterates the importance of identifying the causes of impunity (paras. 86 et seq.). In addition, it would be highly desirable for political parties to incorporate this priority into their programmes, in order to guarantee that it will continue to receive full support following the forthcoming elections.

203. Overcoming the ineffectiveness of the system of justice and the weakness of the security forces in charge of preventing and punishing crime should form part of this comprehensive policy, under a plan for correcting the current lack of coordination among the Public Prosecutor's Office, the judiciary and the National Police, so that these institutions can fulfil the functions assigned to them under the new Code of Criminal Procedure.

204. Without prejudice to the foregoing, the Mission recommends that the Government immediately consider actions such as: (a) taking political, disciplinary or administrative measures against persons who violate human rights or promote impunity; (b) supporting the judiciary and the Public Prosecutor's Office by creating conditions in which their representatives can carry out their investigations and actions without pressure or fear, and by supplying them with more human, technical and financial resources; (c) promoting and introducing improvements in the administration and management of the institutions of the justice system; (d) making the necessary budgetary allocations to give these entities more human, technical and financial resources and to make them available in the many parts of the country where they are currently lacking; and (e) introducing, within its sphere of competence, programmes of training,

refresher courses and specialized instruction for judicial officers, judges and prosecutors in relation to the new Code of Criminal Procedure.

205. In the Mission's view, the National Police's key role in fighting impunity calls for sweeping reforms of its institutional bases and of the process used to select and train its officers, in order to correct its structural and professional weaknesses and to supply it with new resources.

206. The Mission calls upon the highest authority of the Public Prosecutor's Office to ensure that whenever this institution learns of offences committed by public officials, it adopts measures to enable prosecutors to exercise their powers swiftly and decisively and to take prompt and substantive action in fulfilment of their indelegable role in the fight against impunity, regardless of the rank or status of the persons involved.

207. The Mission also calls upon the Supreme Court of Justice to pay special attention, in reviewing the conduct of judges, to cases involving human rights violations. It suggests that such reviews be carried out according to predetermined, publicly announced criteria that safeguard the legal guarantees of those affected and the independence of the judiciary. The Mission suggests that the Government promote the adoption of the Judicial Civil Service Act and the Judicial Career Act, both of which are provided for in the Political Constitution of the Republic.

208. Without prejudice to the recommendations contained in paragraphs 189 et seq., the comprehensive policy to fight the root causes of impunity should include a strategy for the complete eradication of illicit associations linked to crime which may enjoy the support, complicity or tolerance of State agents.

209. The Mission has noted attitudes which favour impunity when the justice system deals with military interests, either because the issues involved, such as the armed conflict, are considered to be exclusively within military jurisdiction, or because army members or collaborators are involved in the acts in question.

210. The Mission reiterates its recommendation that the Government promote legislative reforms to limit the jurisdiction of military courts to specifically military offences committed by military personnel.

211. The Mission concludes that in many cases, military commissioners and members of the Voluntary Civil Defence Committees continue to exercise control over rural communities and that they have been implicated in abuses and human rights violations. The Government should not allow military commissioners and CVDC members to continue to exercise functions which are essential and indelegable duties of the State, such as the maintenance of security and law and order.

212. Without prejudice to the criminal penalties which may derive from these actions, the Mission recommends that the army play an active role in combating impunity by preventing, investigating and correcting such conduct, in view of its authority over military commissioners and its strong influence on the activities of CVDCs.

213. The Mission reaffirms that everyone living in Guatemala has the fundamental right to be free from fear and to be protected from attacks on his or her life, integrity, safety and freedom. To correct the situation of impunity and the latent culture of intolerance, community involvement is essential. To that end, the Mission calls upon the Government to launch a nation-wide campaign for justice and tolerance, with the participation of all sectors of Guatemalan society. For its part, the Mission will demonstrate its commitment to that effort by providing assistance through programmes aimed at institution-building and promoting a culture of respect for human rights.

Acknowledgements

214. The Mission reiterates its thanks to the members of the international community for their constant willingness to provide diplomatic, political and financial support for the peace process in Guatemala through MINUGUA, and invites them to continue to support institution-building and cooperation projects which could be implemented by the Mission and the relevant institutions and entities, with the participation of United Nations organizations and programmes.

215. The Mission is also grateful, once again, to the ambassadors of the Group of Friends of the Guatemalan peace process for their ongoing interest in and support for the work of MINUGUA.

216. Lastly, the Mission expresses its thanks to Guatemalan society for the trust it has placed in MINUGUA.

Notes

a/ According to the MINUGUA verification handbook, a case is closed when sufficient evidence is obtained to establish whether or not a violation occurred or when, in the course of verification, it is established that the complaint is based on inaccurate data or falls outside the Mission's mandate. A case may also be closed when, after a discretionary period, no information is obtained on the incident, making it impossible to verify. In the latter instance, the availability of new information may warrant reopening the case.

APPENDIX

Statistical tables on the complaints admitted and the priority rights involved

Table 1. COMPLAINTS ADMITTED, BY CATEGORY OF ALLEGED VIOLATION a/

Right to life		
Extrajudicial executions or deaths in violation of legal guarantees		54
Attempted extrajudicial executions		25
Death threats		146
	Total	225
Right to integrity and security of person		
Torture		10
Cruel, inhuman or degrading treatment		3
Ill-treatment		4
Excessive use of force		6
Other threats		117
	Total	140
Right to individual liberty		
Arbitrary detention		14
Detention in violation of legal guarantees		20
Kidnapping		3
Hostage-taking		0
Enforced disappearances		6
Forcible, unjust or discriminatory recruitment		7
	Total	50
Right to due process		
Procedural guarantees		20
Right of habeas corpus		2
Right of access to the justice system		54
	Total	76

a/ The number of complaints in each category may change during the verification process.

Political rights		2
	Total	2
Right to freedom of expression		-
	Total	-
Right to freedom of association		35
	Total	35
Right to freedom of movement		8
	Total	8
Other violations in the internal armed conflict		
Harm or suffering inflicted on civilians		20
Attacks on civilian property		7
Attacks on property essential to the survival of the civilian population		1
Acts of terrorism		4
Failure to protect health workers and religious workers		0
Participation of children under 15 in the internal armed conflict		2
	Total	34
	Grand total	570

TABLE 2. PERCENTAGE OF COMPLAINTS ADMITTED IN EACH CATEGORY

		Percentage
Right to life	225	39.47
Right to integrity and security of person	140	24.56
Right to individual liberty	50	8.77
Right to due process	76	13.34
Political rights	2	0.36
Right to freedom of expression	0	0
Right to freedom of association	35	6.14
Right to freedom of movement	8	1.4
Violations in the internal armed conflict	34	5.96
Total	570	100.00

Table 3. PERCENTAGE OF COMPLAINTS ADMITTED IN EACH CATEGORY: COMPARISON BETWEEN THE FIRST a/ AND SECOND REPORTS

	1st report	Percentage	2nd report	Percentage
Right to life	107	37.15	225	39.47
Right to integrity and security of person	65	22.56	140	24.56
Right to individual liberty	34	11.8	50	8.77
Right to due process	53	18.4	76	13.34
Political rights	1	0.37	2	0.36
Right to freedom of expression	2	0.69	0	0
Right to freedom of association	10	3.47	35	6.14
Right to freedom of movement	4	1.38	8	1.4
Violations in the internal armed conflict	12	4.18	34	5.96
Total	288	100.00	570	100.00

a/ The number of complaints in each category may change during the verification process.

United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala
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Subregional office
MINUGUA headquarters
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Barillas
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El Golfete
Sierra de Chamá
Sierra de Santa Cruz
Sierra de los Cuchumatanes
Sierra de las Minas
Presa de la Angostura
L. del Tigre
L. Perdida
L. Petén Itzá
L. de Güija
Usumacinta
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Belize
Sarstún
Motagua
International boundary
Department boundary
National capital
Department capital
Pan American highway
Road
Railroad
Airport
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